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Special Report

“Prohibition of Corporal Punishment of Children in Bosnia and Herzegovina”

Banja Luka, October 2019



**SPECIAL REPORT “PROHIBITION OF CORPORAL
PUNISHMENT OF CHILDREN
IN BOSNIA AND HERZEGOVINA”**

“A child’s life is like a piece of paper on which every person leaves a mark.”
Chinese proverb

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I Introduction

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution whose mission is to promote good governance and the rule of law, protection of the freedoms of natural and legal persons enshrined in the Constitution of Bosnia and Herzegovina and international agreements in Annexes to the Constitution. Pursuant to the Law on Human Rights Ombudsman of Bosnia and Herzegovina, the Ombudsman of Bosnia and Herzegovina acts upon individual applications and registered cases, and in addition to that undertakes a number of activities and measures to protect and promote human rights. Notable activities include research on certain phenomena, education, special reports, participating in professional gatherings discussing the realm of human rights in general, providing opinions and suggestions regarding draft legislation, strategies, etc. The Ombudsman may propose measures to the competent authority the application of which would improve the situation and issue a special report containing proposed amendments to the laws and other regulations, when the Ombudsman deems necessary.

The Ombudspersons believe that freedom from corporal punishment is the right of every person. It is also the right of every child to enjoy equal rights to the respect for their human dignity and bodily integrity, and equal protection before the law. One of the prerequisites for this is good cooperation and coordination of all competent authorities. At the fourth session held on 4 February 2019, the Ombudspersons adopted the conclusion that a Special Report on prohibition of corporal punishment of children in Bosnia and Herzegovina should be produced in 2019. Violence against adults in any context and all settings is forbidden and punishable, while violence against children is forbidden and punishable only in educational institutions, social protection institutions and institutions for enforcement of criminal sanctions.

This report aims to explain the purpose of introducing the prohibition of corporal punishment of children, whereby such punishment does not necessarily mean only the disciplining of the child, or punishment by a parent, sibling, guardian or adoptive parent, but also implies the creation of better conditions for the so-called positive parenting, or parenting without using violent methods of child education and discipline. By this report, the Ombudspersons would like to contribute to the protection of the rights of the child, within their mandate and authority, so that the executive and legislative bodies would give serious consideration to the express prohibition of the corporal punishment of children. The international instruments oblige Bosnia and Herzegovina to take all necessary actions to fully prohibit corporal punishment of children in all settings, including the family.

II Research methodology

The Special Report is a result of research and analysis of the situation on the ground. Applicable laws of Bosnia and Herzegovina will be presented along with the relevant international standards and observations and experiences of the Ombudspersons related to this issue. In the course of the drafting of this Report, a letter dated 22 July 2019 was disseminated to all Ministries of the

Interior in Bosnia and Herzegovina¹ seeking information and statistical data on reported cases of corporal punishment of children by adults over the past two years (the period between 1 July 2017 and 1 July 2019), and if there were such cases, the age of the children affected, who reported the cases and what action was taken.

III Legal framework

3.1. International standards

International human rights instruments are founded on the basic principle that every human being has inherent, equal, inalienable and universal rights, deriving from the dignity of all human beings.

UN Universal Declaration of Human Rights² emphasizes that all human beings are born free and equal in their dignity and rights³.

UN Convention on the Rights of the Child⁴ is a particularly important instrument in the field of child rights, and all rights guaranteed thereunder are equally important. By accepting the Convention, we have undertaken the obligation to take all actions to create the conditions where all rights of the child will be exercised. There is an obligation to align all laws with the Convention and the needs of the child, and to create conditions for their application. Article 6 of the Convention provides that every child has the right to life, growth and development. Article 19 prescribes that the child has the right to be protected from all forms of violence, regardless of who may perpetrate it. Article 37 of the Convention provides that the child is entitled to protection and that no one has the right to torture, humiliate or cruelly punish the child.

Particularly emphasized is the importance of Article 19 of the Convention on the Rights of the Child “*States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*”

¹ Ministry of the Interior of the Bosnia-Podrinje Canton; Ministry of the Interior of Herzegovina-Neretva Canton; Ministry of the Interior of the Canton 10; Ministry of the Interior of the Posavina Canton; Ministry of the Interior of the Sarajevo Canton; Ministry of the Interior of the Central-Bosnia Canton; Ministry of the Interior of the Tuzla Canton; Ministry of the Interior of the Una-Sana Canton; Ministry of the Interior of the West Herzegovina Canton; Ministry of the Interior of the Zenica-Doboj Canton; Ministry of the Interior of the Republika Srpska and the Police of the Brčko District of Bosnia and Herzegovina.

² Adopted and proclaimed at the General Assembly of the United Nations on 10 December 1948.

³ Article 1 Universal Declaration of Human Rights.

⁴ By notification of succession, Bosnia and Herzegovina took over the UN Convention on the Rights of the Child on 23 November 1993 (Official Gazette of the Republic of Bosnia and Herzegovina, number: 25/1993). UN Convention on the Rights of the Child is a part of Annex I. The issue of its application in Bosnia and Herzegovina was differently interpreted until the Decision of the Constitutional Court of Bosnia and Herzegovina number U-9/0925 entered into force. Under this Decision, the Constitutional Court has the authority to review independently in the appellate proceedings the alleged breaches of rights arising from international treaties contained in Annex I of the Constitution of Bosnia and Herzegovina.

According to the data of the *Global Initiative to End All Corporal Punishment of Children*, an international organization dealing exclusively with advocacy for explicit prohibition of corporal punishment of children in all settings⁵, from July 2019, corporal punishment of children in all settings is explicitly forbidden in 56 countries. The Ombudspersons also use this occasion to refer to the importance of the **General Comment No. 8 (2006)⁶ of the UN Committee on the Rights of the Child “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”** which provides clarifications on the interpretation of Article 19 of the Convention. General Comment No. 8 provides a broader definition of the notion of corporal punishment of children, so as to include “... *any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.*” The Committee clearly states that the following interpretation is unacceptable: “*that some level of “reasonable” or “moderate” corporal punishment can be justified as in the “best interests” of the child, as it clearly violates the child’s human dignity and the right to physical integrity, and that the right to freedom of religious belief cannot in any way justify the violation of the right to protection from violence.*” Committee on the Rights of the Child expressed concern about the corporal punishment of children in 2005 and 2012 and recommended that Bosnia and Herzegovina should expressly prohibit the corporal punishment of children in all settings, in the interest of protection of children from any form of physical or mental violence and physical punishment. Under international law, countries are required to forbid torture and other cruel, inhuman or degrading treatment or punishment in any setting. In its concluding observations, the UN Committee on Rights of the Child has expressed serious concern about the high prevalence of corporal punishment of children in home, and widespread acceptance of a certain degree of violence in “disciplining” children. The Committee has urged Bosnia and Herzegovina to *take all appropriate measures to explicitly prohibit corporal punishment in all settings, including the domestic context, throughout its territory. Furthermore, it recommends that the State party strengthen and expand awareness-raising and education programmes, including campaigns, in order to promote positive and alternative forms of discipline and respect for children’s rights with the involvement of children, while raising awareness about the adverse consequences of corporal punishment*⁷.

Other international human rights treaty bodies of the United Nations, including the Committee on Economic, Social and Cultural Rights, Human Rights Committee and Committee against Torture have also condemned corporal punishment.

General Comment No. 13 (2011) of the UN Committee on the Rights of the Child “The right of the child to freedom from all forms of violence” also relates to Article 19 of the UN Convention on the Rights of the Child “since the extent and intensity of violence exerted on

⁵ Global Initiative to End All Corporal Punishment of Children www.endcorporalpunishment.org

⁶ General comment is an official document of the United Nations containing interpretation, presentation and explanation of the implications of a right. Committee on the Rights of the Child of the United Nations produces and publishes general comments in relation to the implementation of the Convention on the Rights of the Child. General comments are disseminated to the states that ratified the Convention. The purpose of general comments is better understanding of some sections and aspects of the Convention.

⁷ Taken over from the recommendations of the Committee on the Rights of the Child of the United Nations of 21 September 2005, from the 39th session /CRC/C/15/ADD 260 - concluding observations Bosnia and Herzegovina and the recommendations of the Committee on the Rights of the Child of the United Nations of 3 October 2012, from the 61st session of the Committee /CRC/C/OPAC/BIH/CO2-41 - concluding observations Bosnia and Herzegovina.

children is alarming.”. The Committee emphasizes that “measures to end violence must be massively strengthened and expanded in order to effectively put an end to these practices which jeopardize children’s development and societies’ potential non-violent solutions for conflict resolution.” This General Comment particularly emphasizes the following in section IV Legal analysis of Article 19: *“Violence among children: This includes physical, psychological and sexual violence, often by bullying, exerted by children against other children, frequently by groups of children, which not only harms a child’s physical and psychological integrity and wellbeing in the immediate term, but often has severe impact on his or her development, education and social integration in the medium and long term. Also, violence by youth gangs takes a severe toll on children, whether as victims or as participants. Although children are the actors, the role of adults responsible for these children is crucial in all attempts to appropriately react and prevent such violence, ensuring that measures do not exacerbate violence by taking a punitive approach and using violence against violence.”*

UN Secretary General’s study on violence against children (UN study)⁸ requires universal elimination of corporal punishment of children by 2009. *“No violence against children is justifiable; all violence against children is preventable” is the key message of the report on the study submitted to the UN General Assembly in October 2006.*⁹

“In every region, in contradiction to human rights obligations and children’s developmental needs, violence against children is socially approved, and is frequently legal and State-authorized. The Study should mark a turning point — an end to adult justification of violence against children, whether accepted as “tradition” or disguised as “discipline”. There can be no compromise in challenging violence against children. Children’s uniqueness — their potential and vulnerability, their dependence on adults — makes it imperative that they have more, not less, protection from violence.”

The report recommends the prohibition of all forms of violence against children, in domestic and all other settings, including all corporal punishment and any cruel, inhuman or degrading punishment. The UN study analyses violence against children in different settings in which it occurs, starting from home and family.

The Council of Europe has played a key role in the UN Study process and is committed to ensuring follow-up to its recommendations in Europe. The Council of Europe initiative against corporal punishment aims to achieve a ban on all corporal punishment and promote positive parenting and a culture of non-violence to ensure a childhood free from violence for all children. Just as the Council of Europe systematically campaigned to rid Europe of the death penalty, it is now pursuing its vision of a continent free of corporal punishment. Hitting people is wrong – and children are people too. Children have the same rights as adults to respect for their human dignity and physical integrity and to equal protection under the law. The 47 member states of the Council of Europe have immediate human rights obligations, under international and regional human rights instruments, to reform their laws and take educational and other measures to prohibit and eliminate all corporal punishment of children, including within the family home. In 2006, this became not just a regional but a global goal. The United Nations Secretary-General’s

⁸ <https://undocs.org/A/61/299>

⁹ An independent expert Paulo Sérgio Pinheiro was appointed by Kofi Annan in 2003 to conduct the UN study. In the introduction he says that violence against children exists in every country in the world, regardless of culture, class, education, income and ethnic origin:

study on violence against children, in a report submitted to the UN General Assembly, has set 2009 as the target date for achieving universal abolition. Europe is well on the way: by October 2007, more than a third of member states had achieved prohibition, and at least eight others had committed themselves to full reform. Children's uniqueness – their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence.¹⁰

Article 37 of the UN Convention on the Rights of the Child also provides that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

A similar prohibition is also set forth in the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**¹¹ and **International Covenant on Civil and Political Rights**.¹²

According to the definition in Article 1 of the Convention on the Rights of the Child a child means “*every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*”

The position of the UN Committee on the Rights of the Child is clear. Member countries are required to introduce express prohibition of corporal punishment of children in all circumstances and settings. In addition, the Ombudspersons emphasize that in 2015 the world leaders pledged to end all forms of violence against children by 2030, as part of the sustainable development goals¹³, which is a global goal and mission.

European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

European Social Charter, Article 17 provides for the right of children and young persons to social, legal and economic protection “*With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organizations, to take all appropriate and necessary measures designed to protect children and young persons against negligence, violence or exploitation.*”

¹⁰ From the publication “Abolishing corporal punishment of children - questions and answers “Building a Europe for and with children” (2008) www.coe.int/children

¹¹ Convention of the Council of Europe “Countries must make efforts to prevent and criminalize torture and attempted torture and these offenses must be accompanied with “appropriate punishment”. In addition, the countries must ensure that the victims of torture have the right to remedy and redress, including the right to a fair and adequate compensation.

¹² Article 7 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

¹³ Global goal (at the level of the United Nations), all information available on the web site <https://violenceagainstchildren.un.org> (Special Representative of the UN Secretary-General on Violence Against Children: publications: Toward a world free from Violence /Global survey on violence against children/, Violence prevention must start in early childhood, Celebrating childhood: A journey to end violence against children...) (Sustainable Development Goals to End Violence)

Bosnia and Herzegovina has ratified the revised European Social Charter¹⁴ in 2008 and accepted the articles that relate directly to children, the right of the family to social protection, legal and economic protection, the right to social security, the right to social and medical assistance, the right to benefit from social welfare services and the right of children and young persons to social, legal and economic protection. The purpose of these provisions is to ensure that the child grows up in an enabling environment for the full development of their personality and mental and personal abilities.

3.2. Legislation in Bosnia and Herzegovina

The Constitution of Bosnia and Herzegovina provides that Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law. Pursuant to Annex I of the Constitution of Bosnia and Herzegovina, a part of the legal framework is also the Convention on the Rights of the Child. Bosnia and Herzegovina is among the countries that took over the obligation to protect human rights and freedoms established in the Convention on the Rights of the Child.

Bosnia and Herzegovina is a signatory to all international and regional human rights instruments, including those relative to in particular the rights of the child and prohibition of violence against children. Under the Constitution of Bosnia and Herzegovina, the issue of violence against children is defined by different laws and at different levels of government. Generally speaking, the relevant legislation in the whole country includes the following: Criminal Codes of the Entities and the Brčko District of Bosnia and Herzegovina, family laws, laws on protection from domestic violence, while the coordination in the area of health, social protection and education is in the remit of the Ministry of Civil Affairs of Bosnia and Herzegovina, among other issues¹⁵. The monitoring and implementation of international conventions and other documents in the field of human rights and fundamental freedoms and the promoting of personal and collective human rights and freedoms is in the remit of the Ministry of Human Rights and Refugees of Bosnia and Herzegovina.¹⁶

3.2.1. Constitution of Bosnia and Herzegovina¹⁷

Article II paragraph 1

Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms.

¹⁴ It was opened for signing on 18 October 1961 and entered into force in 1965, and was revised in October 2008.

¹⁵ Article 15 of the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina.

¹⁶ Ibid., Article 12.

¹⁷ “Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina”.

3.2.2. Constitution of the Federation of Bosnia and Herzegovina

Article II paragraph 1

The Federation will ensure the application of the highest level of internationally recognized rights and freedoms provided in the documents listed in the Annex to the Constitution. In particular:

(1) All persons within the territory of the Federation shall enjoy the rights:

a) To life;...

(j) To protection of the family and of children;...

3.2.3. Constitution of the Republika Srpska¹⁸

Article II paragraph 10

Citizens of the Republic shall be guaranteed equal freedoms, rights and duties; they shall be equal before the law and enjoy equal legal protection irrespective of their race, sex, language, ethnic origin, religion, social background, birth, education, financial standing, political and other beliefs, social status and other personal circumstances.

3.2.4. Family laws

Violence against children is regulated by the following family laws: Family Law of the Federation of Bosnia and Herzegovina¹⁹, Family Law of the Republika Srpska²⁰ and Family Law of the Brčko District of Bosnia and Herzegovina²¹.

Article 127 of the Family Law of the Federation of Bosnia and Herzegovina provides that “*a child shall have the right to protection from all forms of violence, abuse and neglect in the family*”. Article 134 paragraph 2 provides that the parents have the obligation to protect the child from violence, and the duty to “*control the child’s behaviour in accordance with their age and maturity level*” (Article 134 paragraph 3. In other words, this Law does not prohibit corporal punishment expressly. Article 4 paragraph 1 of the same Law provides that “*violent behaviour by a spouse or any other family member shall be prohibited in the family*”.

Article 97 of the Family Law of Republika Srpska prescribes: “*Parents and other family members must not subjugate the child to humiliating acts, mental and corporal punishment or abuse.*”

Article 3 of the Family Law of the Brčko District of Bosnia and Herzegovina provides: “*Violent behaviour by spouses or any other family member shall not be allowed in the family.*” *Violent*

¹⁸ Official Gazette of the Republika Srpska, 21/1992, consolidated text, 28/1994, 8/1996, 13/1996, 15/1996, 16/1996, 21/1996, 21/2002, 26/2002, 30/2002, 31/2002, 69/2002, 31/2003, 98/2003, 115/2005, 117/2005 and 48/2011.

¹⁹ Official Gazette of the Federation of Bosnia and Herzegovina, 35/2005, 41/2005, 31/2014 and 32/2019.

²⁰ Official Gazette of the Republika Srpska, 54/2002, 41/2008 and 63/2014.

²¹ Official Gazette of the Brčko District of Bosnia and Herzegovina, 23/2007.

behaviour shall mean any behaviour with elements of the criminal offense of domestic violence as defined in the Criminal Code of the Brčko District of Bosnia and Herzegovina.”

In addition, Article 110 of the Family Law of the Brčko District of Bosnia and Herzegovina provides that *“a child shall have the right to protection from all forms of violence, abuse and neglect in the family”*.

3.2.5. Criminal legislation/criminal codes

Criminal Code of the Republika Srpska²² provides for the following criminal offenses against life and limb, related to the corporal punishment of the child: In the chapter on criminal offenses against life and limb, the following criminal offenses: bodily harm, grievous bodily harm, abandonment of a helpless person, infanticide. In the chapter on criminal offenses against civic rights and freedoms, the following criminal offenses: trafficking in children, collusion for criminal offenses of trafficking in human beings and trafficking in children. In the chapter on criminal offenses against sexual integrity, the following criminal offenses: sexual abuse and exploitation of the child. In the chapter on criminal offenses of sexual abuse and exploitation of children, the following criminal offenses: sexual intercourse with a child under fifteen years, exploitation of children for pornographic content and in the chapter on criminal offenses against marriage and family, the following criminal offenses: domestic violence or violence in a family union, child neglect and abuse, child abandonment.

Criminal Code of the Federation of Bosnia and Herzegovina²³ provides for the following criminal offenses against life and limb, related to the corporal punishment of the child: In the chapter on criminal offenses against life and limb, the following criminal offenses: infanticide, grievous bodily harm, mild bodily harm. In the chapter on criminal offenses against sexual freedom and morality, the following criminal offenses: rape, sexual intercourse with a child, human trafficking. In the chapter on criminal offenses against marriage, family and youth, the following criminal offenses: neglect or abuse of a child or a minor, breach of family obligations, domestic violence.

Criminal Code of the Brčko District of Bosnia and Herzegovina²⁴ provides for the following criminal offenses against life and limb related to the corporal punishment of the child: In the chapter on criminal offenses against life and limb, the following criminal offenses: bodily harm, mild bodily injury. In the chapter on criminal offenses against sexual freedom and morality, the following criminal offenses: rape, sexual intercourse with a child, human trafficking. In the chapter on criminal offenses against marriage, family and youth, the following criminal offenses: domestic violence.

²² Criminal Code of Republika Srpska, Official Gazette of Republika Srpska, 64/2017 and 66/2018 – Decision of the CC.

²³ Official Gazette of the Federation of Bosnia and Herzegovina, 36/2003, 37/2003, 21/2004, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 and 75/2017.

²⁴ Official Gazette of the Brčko District of Bosnia and Herzegovina, 10/2003, 45/2004, 06/2005, 21/2010, 52/2011, 26/2016, 13/2017 and 50/2018.

3.2.6. Laws on protection from domestic violence

Law on Protection from Domestic Violence in the Federation of Bosnia and Herzegovina²⁵ enacted in 2013 does not contain provisions on misdemeanour. This provision was included in Article 1 of the Law on Protection from Domestic Violence (Official Gazette of the Federation of Bosnia and Herzegovina, 22/05) which prescribed: *This Law shall regulate: Protection from domestic violence, the notion of domestic violence, persons considered family members for the purposes of this Law, the manner of protection of family members and the type and purpose of misdemeanour sanctions for the perpetrators of the violent acts*, and Article 7 paragraph 3 read: *persons referred to in paragraphs 1 and 2 hereof are authorized petitioners for the instigation of the misdemeanour proceedings.*

However, in the Law of the Republika Srpska²⁶ Article 6 paragraph 1 provides as follows: *“(1) Domestic violence in the sense of this Law exists if the grounds for suspicion exist that a member of the family or family union perpetrated the acts of physical, sexual, mental and/or economic violence, as well as threats inciting fear from physical, sexual, mental and/or economic damage in the other member of the family or family union.” Paragraph 2 of this Article specifies the exact acts that constitute domestic violence... a) use of force against physical or mental integrity of the member of the family or family union....* Article 5 paragraph 1 of the Law of the Brčko District of Bosnia and Herzegovina²⁷ provides as follows: *a violent act that does not contain the elements of a criminal offense shall constitute a misdemeanour if it is: a) threat of bodily harm against a family member or a person close to them*, which remains a potential challenge for the courts and may put the legal certainty of victims in doubt.²⁸

Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina from 2013 highlights the protection of children in Article 7 paragraph 10 which reads as follows: *“The use of physical and mental violence against children and neglect in upbringing”* as part of the broader definition of domestic violence. In addition, Article 7 of the Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina defines domestic violence as *“any act causing physical, mental, sexual or economic damage, as well as any threat thereof.”* Article 2 provides that: *“The victim of violence for the purposes of this Law shall be any family member exposed to acts of domestic violence”*, and continues *“The child for the purposes of this Law shall be any family member under the age of 18 years.”*. Therefore, Article 2 of the Law defines all family members under the age of 18 years as children.

Law on Protection from Domestic Violence of the Brčko District of Bosnia and Herzegovina does not define domestic violence, even though it was passed in 2018. Rather, Article 5 lists the acts of violence, *threat of bodily harm against a family member or a person close to them*. Article 2 of the Law on Protection from Domestic Violence of the Brčko District of Bosnia and Herzegovina²⁹ contains the definition that *“family is a unit of parents and children and other*

²⁵ Official Gazette of the Federation of Bosnia and Herzegovina, 20/2013.

²⁶ Official Gazette of the Republika Srpska, 102/2012, 108/2013, 82/2015 and 84/2019.

²⁷ Official Gazette of the Brčko District of Bosnia and Herzegovina, 7/2018.

²⁸ Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

²⁹ Official Gazette of the Brčko District of Bosnia and Herzegovina, 7/2018.

relatives”, and the same provision defines “*the child*” as a minor who has not yet reached the age of 18 years.

Contrary to the Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina and the Law on Protection from Domestic Violence of the Brčko District of Bosnia and Herzegovina, the Law on Protection from Domestic Violence of the Republika Srpska provides considerably more detailed definitions of violence and its forms (acts of violence). Article 6 of the Law on Protection from Domestic Violence of the Republika Srpska, in addition to various forms of mental, physical, sexual and economic violence, also foresees that: “*threat of acts of violence shall also be considered an act of violence.*”

Domestic violence³⁰ is any offense inflicting physical, mental and sexual injury, suffering, economic damage, or the threat of such offenses and the lack of care and attention which may seriously prevent the members of the family and persons in immediate social relationship, regardless of whether they lived as a unit, to enjoy their rights and freedoms based on gender equality principles in all areas of public and private life.

All of the above leads to the conclusion that corporal punishment within the family is not expressly prohibited in the family laws of the Federation of Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina respectively. In addition, corporal punishment of the child in the family is not criminalized in any of the three criminal codes.

The Council of Ministers of Bosnia and Herzegovina adopted the Action Plan for Children of Bosnia and Herzegovina 2015-2018, which sets forth specific measures pertaining to the criminalization of corporal punishment through the amendments to the criminal codes: “*Measure No. 4: Harmonization of the criminal legislation with the recommendations of the Committee on the Rights of the Child: Put forward an initiative for amendments to the existing criminal codes, so as to expressly prohibit corporal punishment of children in all settings, including the family setting, throughout its territory.*”. However, this measure has not been implemented to date in the Federation of Bosnia and Herzegovina and the Brčko District.

3.2.7. Emotional abuse

Pursuant to Article 7 of the Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina³¹, Article 6 of the Law on Protection from Domestic Violence of the Republika Srpska³², and Article 5 of the Law on Protection from Domestic Violence of the Brčko District of Bosnia and Herzegovina³³, emotional/psychological abuse and neglect is: *Causing fear or the feeling of personal endangerment or violation of dignity through extortion or verbal threats or other forms of coercion; serious verbal attacks, acts, scolding, use of*

³⁰ Article 5 of the Law on Protection from Domestic Violence of the Brčko District of Bosnia and Herzegovina, Official Gazette of the Brčko District of Bosnia and Herzegovina 7/2018, Article 6 of the Law on Protection from Domestic Violence in the Republika Srpska, Official Gazette of Republika Srpska 102/2012, 108/2013 and 82/2015 and Article 7. Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina 20/2013.

³¹ Official Gazette of the Federation of Bosnia and Herzegovina, 20/2013.

³² Official Gazette of the Republika Srpska, 102/2012, 108/2013 and 82/2015.

³³ Official Gazette of the Brčko District of Bosnia and Herzegovina, 7/2018.

derogatory names and other forms of abuse of another family member; spying and all other forms of abuse of another family member; damaging or destruction of shared assets or assets in possession or attempt to do so; redirecting due care and control or failure to provide help and protection, despite the legal and customary obligation, which may result in the feeling of physical, mental or economic and social peril; and isolation and limitation of the freedom of movement and communication with third parties.

Criminal codes³⁴ define domestic violence as a criminal offense, and the mental health of the family member is treated equally as physical health in all three codes.

In addition, psychological abuse is defined in the family laws of Bosnia and Herzegovina, Republika Srpska and Brčko District of Bosnia and Herzegovina, and has the same legal status as physical abuse.

IV Situation analysis/study results

During the study conducted for the purpose of the Special Report, on 22 July 2019, a letter No. Ž-BR-01-154/19 was sent to cantonal ministries of the interior³⁵, the Ministry of the Interior of the Republika Srpska and the Police of the Brčko District of Bosnia and Herzegovina. The letter requests information whether there were any reported cases of corporal punishment of children by adults over the last two years (from 1 July 2017 until 1 July 2019), and if so, the data on the age of the children and who filed the report, as well as data on follow-up activities in individual cases.

Institution of the Ombudsman received replies, and 4 (four) ministries (Ministry of the Interior of the Central-Bosnia Canton, Ministry of the Interior of the Bosnia-Podrinje Canton, Ministry of the Interior of the Posavina Canton and Ministry of the Interior of the West-Herzegovina Canton) replied *that there were no reported cases of corporal punishment of children by adults in the specified time frame*³⁶.

³⁴ Criminal Code of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina, 36/2003, 37/2003, 21/2004, 69/2004, 18/2005, 42/2010,42/2011, 59/2014, 76/2014, 46/2016 and 75/2017.

Criminal Code of the Republika Srpska, Official Gazette of the Republika Srpska, 64/2017.

Criminal Code of the Brčko District of Bosnia and Herzegovina, Official Gazette of the Brčko District of Bosnia and Herzegovina, 10/2003, 45/2004, 06/2005, 21/2010, 52/2011, 26/2016, 13/2017 and 50/2018.

³⁵ Ministry of the Interior of the Central-Bosnia Canton, Ministry of the Interior of the Bosnia-Podrinje Canton, Ministry of the Interior of the Posavina Canton, Ministry of the Interior of the West-Herzegovina Canton, Ministry of the Interior of the Herzegovina-Neretva Canton, Ministry of the Interior of the Canton 10, Ministry of the Interior of the Una-Sana Canton, Ministry of the Interior of the Sarajevo Canton, Ministry of the Interior of the Zenica-Doboj Canton and Ministry of the Interior of the Tuzla Canton.

³⁶ 1 - Letter of the Ministry of the Interior of the Central-Bosnia Canton, No. 02/3-1-04-2-598/19 EL of 31 July 2019.

2 - Letter of the Ministry of the Interior of the Bosnia-Podrinje Canton, No. 07-01-04-3183/19-1 of 2 August 2019.

3 - Letter of the Ministry of the Interior of the Posavina Canton, No. 02-2-04-267/19-1 of 2 August 2019.

4 - Letter of the Ministry of the Interior of the West-Herzegovina Canton, Administration of the Police, Crime Police Sector, No. 02-2-3/1-1995/19-6 SZ of 6 August 2019.

Eight (8) replies from the ministries of the interior and the Police of the Brčko District of Bosnia and Herzegovina contained data on reported cases of corporal punishment of children by adults in the period from 1 January 2017 until 1 January 2019.

The reply³⁷ from the Ministry of the Interior of the Herzegovina-Neretva Canton reads: *“In the period between 1 July 2017 and 1 July 2019, the Ministry of the Interior of the Herzegovina-Neretva Canton received **one report** of corporal punishment of the child, on 30 October 2018. The report was filed at the Police Station in Jablanica by H. Đ. born on 13 April 2001 in Jablanica, against her father A. Đ., for violence - corporal punishment.*

Police Station in Jablanica filed a report against A.Đ. to the relevant Prosecutor’s Office. On 17 April 2019, H.Đ. gave a statement on the premises of the Police Station in Jablanica by which she dropped the charges against the father. Soon thereafter, A.Đ. died following an illness, and the proceedings were terminated on that ground as well.”

The reply from the Police of the Brčko District of Bosnia and Herzegovina³⁸ reads: *“We inform you that the Police of the Brčko District of Bosnia and Herzegovina registered **two reports** of the corporal punishment of children by an adult in the period from 1 July 2017 until 1 July 2019. In both cases the report of the corporal punishment of children by an adult was filed by the mothers of minor children aged 17, 14, 12 and 5. Following the investigation, the Police of the Brčko District of Bosnia and Herzegovina filed two reports against two persons to the Prosecutor’s Office of the Brčko District of Bosnia and Herzegovina, due to the grounds for suspicion that they committed the criminal offense of domestic violence, in violation of Article 218 of the Criminal Code of the Brčko District of Bosnia and Herzegovina.*

The reply from the Ministry of the Interior of the Canton 10³⁹ reads: *“In response to your letter referenced above, we inform you that there were **four reported cases** of physical abuse of children by adults in the area of responsibility of this Ministry in the period from 1 July 2017 until 1 July 2019. The reports were filed in 2018.*

1. Abuse of a three-year old daughter by her mother was reported by the girl’s father. The report on the commission of the criminal offense of domestic violence in violation of Article 222 of the Criminal Code of the Federation of Bosnia and Herzegovina was sent to the Cantonal Prosecutor’s Office.

2. Violence perpetrated by the father against his daughters aged 13 and 15 respectively, reported by the victim.

3. Violence perpetrated by the father against his daughter aged 15, reported by common-law spouse. In both cases, a report on the commission of the criminal offense of domestic violence in violation of Article 222 of the Criminal Code of the Federation of Bosnia and Herzegovina was sent to the Cantonal Prosecutor’s Office.

³⁷ The letter of the Ministry of the Interior of the Herzegovina-Neretva Canton Mostar, No. 02-01-04-03-723/19 of 8 August 2019.

³⁸ Letter of the Police of the Brčko District of Bosnia and Herzegovina, No. 14.05-04.12-54857/19 of 7 August 2019.

³⁹ Letter of the Ministry of the Interior of the Canton 10, Administration of the Police, Crime Police Sector Livno, No. 02-03/4-3-04-12909/19/MS of 1 August 2019.

4. A report on the attack on a 14-year old boy by his neighbour was also registered. The report on the commission of the criminal offense of violent behaviour in violation of Article 362 of the Criminal Code of the Federation of Bosnia and Herzegovina was sent to the Cantonal Prosecutor's Office.

The incident was reported to the police by the boy's relatives."

The reply from the Ministry of the Interior of the Una-Sana Canton⁴⁰ reads: *"In relation to your letter referenced above, following the search of our official records, we submit the following data:*

- *In the period from 1 July 2017 until 1 July 2019, there were 12 cases reported of physical abuse of children by adults.*
- *The age of the children ranges from two to seventeen.*
- *Reports were filed by: Public institutions - social work centres, family members, teachers, school management.*
- *Action taken: in 11 cases, reports on the commission of the criminal offense were submitted to the Cantonal Prosecutor's Office of the Una-Sana Canton in Bihać, while in one case a police caution was issued by the community police officer."*

The reply from the Ministry of the Interior of the Sarajevo Canton⁴¹ reads: *"Enclosed herewith please find the data requested in your letter referenced above.*

ENCLOSURES: As cited.

INFORMATION

Compiled on the premises of the Department for property-related crimes of the Ministry of the Interior of the Sarajevo Canton, in relation to the letter sent by the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina regarding a planned study for the purposes of the Special Report on prohibition of corporal and mental punishment of children.

In the area of the Sarajevo Canton, in the period from 1 July 2017 until 1 July 2019, the following data were registered:

- *21 (twenty-one) criminal offenses in violation of Article 222 of the Criminal Code of the Federation of Bosnia and Herzegovina (domestic violence), perpetrated by adults against minors.*
- *1 criminal offense in violation of Article 219 of the Criminal Code of the Federation of Bosnia and Herzegovina (neglect or abuse of a child or minor), perpetrated by an adult against a minor.*

Reports were filed by:

- *by parents in 19 cases,*
- *by a social worker, in 1 case,*
- *by a psychologist of the Social Protection Service, in 1 case,*

⁴⁰ Letter of the Ministry of the Interior of the Una-Sana Canton, Administration of the Police, Crime Police Sector, No. 05-04/03-5-10-4/19/BA of 7 August 2019.

⁴¹ Letter of the Ministry of the Interior of the Sarajevo Canton, Administration of the Police, Crime Police Sector, No. 02/3-3-32-4183/19 of 8 August 2019.

- by a teacher in the school attended by the minor, in 1 case.

The age of the minors victims of the criminal offenses under Article 222 of the Criminal Code of the Federation of Bosnia and Herzegovina:

- 3 minors born in 2001,
- 1 minor born in 2002,
- 2 minors born in 2003,
- 1 minor born in 2005,
- 1 minor born in 2007,
- 1 minor born in 2008,
- 1 minor born in 2010,
- 3 minors born in 2011,
- 1 minor born in 2014,
- 6 minors born in 2016,
- 2 minors born in 2017,

*In relation to measures undertaken by the relevant authorities, in all **22 reported cases** of the criminal offenses listed above the police officers of the Ministry of the Interior of the Sarajevo Canton submitted reports on the commission of the criminal offense to the Cantonal Prosecutor's Office in Sarajevo, as well as the report to the relevant Court in Sarajevo moving for the protective measures, which were imposed by the Municipal Court of Sarajevo."*

The reply from the Ministry of the Interior of the Zenica-Doboj Canton⁴² reads: "*With reference to your request No. Ž-BR-01-154/19 of 22 July 2019, delivered on 25 July 2019, We submit the data on cases of physical abuse of children and minors by adults, perpetrated in 2017 and 2018 and in the first 6 months of 2019 in the area of the Zenica-Doboj Canton, as well as data on action taken against the perpetrators.*

⁴² Letter of the Ministry of the Interior of the Zenica-Doboj Canton, Administration of the Police, No. 08-02-01/1-04-2-4212-1/19 of 6 August 2019.

Enclosure: Tables: 1, 2 and 3.

*CASES OF PHYSICAL ABUSE OF CHILDREN AND MINORS
during 2017, 2018 and first six months of 2019
in the area of the Zenica-Doboj Canton*

TABLE 1

2017	Reported by	Age of children (years)	Action taken	Number of cases of child abuse
Police Department (ZENICA) I	1. Public Institution "Health Center" Zenica	8	Case referred to the Police Station Crkvice for further measures within their jurisdiction (motion to the Court seeking protective measures).	5
	2. Police Station Centar forwarded to the Crime Police Section of the Police Department I (Zenica)	13	Case forwarded to the Police Department Živinice, on grounds of territorial jurisdiction.	
	3. Police Station Crkvice forwarded to the Crime Police Section of the Police Department I (Zenica)	10	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
	4. Social Work Center Zenica	13	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
	5. Social Work Center Zenica	14	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
POLICE STATION VISOKO				0
POLICE STATION KAKANJ	1. Report by the mother	11 6 4	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton, and a motion filed to the relevant Court seeking protective measures of prohibition of harassment and stalking of the victims of violence, while the victims were placed in a safe house.	4
	2. Report by the father	17	Misdemeanor proceedings instigated by a motion filed with the relevant Court due to violation of public order by a physical assault. The perpetrator was fined in the amount of BAM 200.00.	
	3. Report by the father	17	Misdemeanor proceedings instigated by a motion filed with the relevant Court due to violation of public order by a physical assault. The perpetrator was fined in the amount of BAM 200.00.	
	4. Report by the father	16	Misdemeanor proceedings instigated by a motion filed with the relevant Court due to violation of public order by a physical assault. The perpetrator was fined in the amount of BAM 200.00.	

POLICE STATION BREZA				0
POLICE STATION ZAVIDOVIĆI				0
POLICE STATION MAGLAJ				0
POLICE STATION ŽEPČE				0
POLICE STATION TEŠANJ	1. Report against the father by the children's aunt	13 12	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	2
	2. Report by the mother	13	Report on the commission of the criminal offense of domestic violence and mild bodily injury filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
POLICE STATION USORA				0
POLICE STATION DOBOJ JUG				0
POLICE STATION OLOVO				0
POLICE STATION VAREŠ				0
CRIME POLICE SECTOR IN HQ				0
TOTAL CASES OF PHYSICAL ABUSE OF CHILDREN AND MINORS				11

TABLE 2

2018	Reported by	Age of children (years)	Action taken	Number of cases of child abuse
Police Department I (ZENICA)	1. Public Institution "Health Center" Zenica	5	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	13
	2. Public Institution "Health Center" Zenica	5	Report on measures and activities undertaken submitted to the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
	3. Social Work Center Zenica	9	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
	4. Social Work Center Zenica	12	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton and a letter sent to the Police Station Crkvice regarding the measures under their jurisdiction (filing a motion for protective measures with the relevant Court).	

	5. Social Work Center Zenica	13	Report on measures and activities undertaken submitted to the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
	6. Social Work Center Zenica	8 9	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
	7. Social Work Center Zenica	12	Case forwarded to the Ministry of the Interior of the Tuzla Canton, on grounds of territorial jurisdiction.	
	8. Police Station Crkvice forwarded the case to the Crime Police Section of the Police Department I (Zenica)	11 10 5 1	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
	9. Police Station Crkvice forwarded the case to the Crime Police Section of the Police Department I (Zenica)	5	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
	10. Police Station Centar forwarded the case to the Crime Police Section of the Police Department I (Zenica)	12	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
	11. Association "Medica" Zenica	12	Case referred to the Police Station Centar for further measures within their jurisdiction (motion to the Court seeking protective measures).	
	12. Through the Registry Office	12	Report on measures and activities undertaken submitted to the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
	13. Through the Registry Office	6	Case forwarded to the Social Work Center for further processing.	
POLICE STATION VISOKO	1. Police Station Visoko	2 3	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton, and a motion submitted to the Municipal Court of Visoko seeking protective measures of a restraining order and ban on stalking of the victims of violence, and the removal from the house/apartment where the victims of violence live.	2
	2. Police Station Visoko	4 10	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton, and a motion submitted to the Municipal Court of Visoko seeking protective measures of a restraining order and ban on stalking of the victims of violence, and the removal from the house/apartment where the victims of violence live.	
POLICE STATION KAKANJ	1. Report by the mother	15	Misdemeanor proceedings instigated by a motion filed with the relevant Court due to violation of public order by a physical assault. The perpetrator was fined in the amount of BAM 200.00.	2
	2. Report by the father	15	Misdemeanor proceedings instigated by a motion filed with the relevant Court due to violation of public order by a physical assault. The perpetrator was fined in the amount of BAM 200.00.	
POLICE				0

STATION BREZA				
POLICE STATION ZAVIDOVIĆI				0
POLICE STATION MAGLAJ	1. Report by the mother, by phone	13	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	2
	2. Report against the father by the abused child	13	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
POLICE STATION ŽEPČE				0
POLICE STATION TEŠANJ	1. Report filed by the pedagogist in the primary school	13	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	1
POLICE STATION USORA				0
POLICE STATION DOBOJ JUG				0
POLICE STATION OLOVO				0
POLICE STATION VAREŠ				0
CRIME POLICE SECTOR IN HQ	1. Older sister reported to the Social Work Center in Zenica	13	Report on measures and activities undertaken submitted to the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	2
	2. Primary school employees reported to the Social Work Center in Zenica	11	Report on the commission of the criminal offense of domestic violence and neglect or abuse of a child or minor filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	
TOTAL CASES OF PHYSICAL ABUSE OF CHILDREN AND MINORS				22

TABLE 3

JAN. - JUNE 2019	Reported by	Age of children	Action taken	Number of cases of child abuse
Police Department I (ZENICA)	1. Police Station Centar	14	Report on measures and activities undertaken submitted to the Cantonal Prosecutor's Office of the Zenica-Doboj Canton	5
	2. Police Station Centar	8	Police Station Centar undertook measures within their jurisdiction (motion to the Court seeking protective measures).	
	3. Police Station Centar	4	Case pending.	
	4. Social Work Center Zenica	10	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton.	
	5. Police Station Nemila	15	Misdemeanor proceedings instigated by a motion filed with the relevant Court due to violation of public order by a physical assault (Article 3 paragraph 1 subparagraph 2 of the Law on Public Order of the Zenica-Doboj Canton).	

POLICE STATION VISOKO	1. Police Station Visoko	8 12	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton, and a motion submitted to the Municipal Court of Visoko seeking protective measures of a restraining order and ban on stalking of the victims of violence, and the removal from the house/apartment where the victims of violence live.	2
	2. Police Station Visoko	13 11	Report on the commission of the criminal offense of domestic violence filed with the Cantonal Prosecutor's Office of the Zenica-Doboj Canton, and a motion submitted to the Municipal Court of Visoko seeking protective measures of a restraining order and ban on stalking of the victims of violence, and the removal from the house/apartment where the victims of violence live.	
POLICE STATION KAKANJ				0
POLICE STATION BREZA				0
POLICE STATION ZAVIDOVIĆI				0
POLICE STATION MAGLAJ	1. Report against the father by the abused child, by phone	16	Report on the commission of the criminal offense of domestic violence submitted to the Cantonal Prosecutor's Office of the Zenica-Doboj Canton and the Police Station Maglaj submitted a motion with the relevant Court for protective measures. The Municipal Court of Zavidovići, Department in Maglaj, issued a restraining order to the perpetrator.	2
	2. Report against the stepfather by the abused child, by phone	12 9 1	Report on the commission of the criminal offense of domestic violence submitted to the Cantonal Prosecutor's Office of the Zenica-Doboj Canton and the Police Station Maglaj submitted a motion with the relevant Court for protective measures. The Municipal Court of Zavidovići, Department in Maglaj, issued a restraining order to the perpetrator.	
POLICE STATION ŽEPČE				0
POLICE STATION TEŠANJ				0
POLICE STATION USORA				0
POLICE STATION DOBOJ JUG				0
POLICE STATION OLOVO				0
POLICE STATION VAREŠ				0
CRIME POLICE SECTOR IN HQ				0
TOTAL CASES OF PHYSICAL ABUSE OF CHILDREN AND MINORS				9

The reply from the Ministry of the Interior of the Tuzla Canton⁴³ reads: *With reference to your letter referenced above, the officers of the Administration of the Police of the Ministry of the Interior of the Tuzla Canton searched the records, and we submit a table with statistical data on*

⁴³ Letter of the Ministry of the Interior of the Tuzla Canton, Administration of the Police No. 08-06/3-2-260/19/R/B of 9 August 2019.

reports of corporal punishment of children in the period 2017-2019, on which the police officers of this Ministry worked.

	07/2017	2018	07/2019
<i>1. REPORTED CASES OF CORPORAL PUNISHMENT OF CHILDREN BY ADULTS</i>	18	52	22
<i>2 TOTAL NUMBER OF REPORTED VICTIMS CHILDREN/MINORS</i>	20	62	26
<i>a) Children 0-14 years of age</i>	11	32	15
<i>b) Minors 14-18</i>	9	30	11
<i>3 TOTAL NUMBER OF PERSONS REPORTING</i>	18	52	22
<i>a) Anonymous reports</i>	3	5	3
<i>b) Reports by guardians</i>	11	30	9
<i>c) Reports by victims</i>	1	6	7
<i>d) Reports by government and non-governmental organizations</i>	3	11	3
<i>4 TOTAL NUMBER OF REPORTS RESOLVED</i>	18	52	22
<i>a) Report on the commission of the criminal offense submitted</i>	14	36	19
<i>b) Report on the incident/measures and activities undertaken submitted</i>	2	15	3
<i>c) No elements of a criminal offense</i>	2	1	0

The reply from the Ministry of the Interior of the Republika Srpska⁴⁴ reads: “With reference to your letter number: Ž-BR-01-154/19 of 22 July 2019, we enclose statistical data on cases of corporal punishment of children by adults, as registered by the Ministry of the Interior of the Republika Srpska in the period from 1 July 2017 until 1 July 2019. There were **55 cases** in total of corporal punishment of 56 children by adults. The age of the children victims of corporal punishment was registered as follows:

- 30 children under 14
- 12 children between 14 and 16 and
- 14 children between 16 and 18.

These cases of violence were most often reported by parents (33), schools (5), child victims (3), grandmothers of the victims (3), health institutions (3), social work centres (2), brother of the victim (1), friend of the victim (1) and other persons (4).

Following the receipt of the reports, police officers of the Ministry of the Interior of the Republika Srpska took action and:

⁴⁴ Letter of the Ministry of the Interior of the Republika Srpska, No. S/M-4-052-2234/19 of 21 August 2019.

- *submitted reports on the commission of criminal offenses to the relevant Prosecutor's Offices in 39 cases,*
- *submitted reports on measures and actions taken to the relevant Prosecutor's Offices in 2 cases,*
- *filed motions for instigation of misdemeanour proceedings with the relevant basic courts in 14 cases."*

The replies received lead to the conclusion that police officers act pursuant to the law in relation to the reports of corporal punishment of children by adults and that they submitted reports to the relevant Prosecutor's Offices for further action in the majority of cases. On the other hand, the Institution of the Ombudsman did not conduct the research with the Prosecutor's Offices, because this Special Report seeks to highlight and raise awareness of the importance of the prohibition of corporal and mental punishment of children in Bosnia and Herzegovina. Public awareness of unacceptability of physical/corporal punishment of children is not high enough, because of the lack of knowledge awareness in the general public on the consequences of this form of violence. The whole society is responsible for this issue, as its primary consideration must be the principle of the best interest of the child.

The data received leads to the conclusion that corporal punishment of children in family is not defined as a distinct criminal offense in either of the three criminal codes in Bosnia and Herzegovina. In practice this most often means that the competent law enforcement authorities submit reports to the Prosecutor's Offices on criminal offenses of domestic violence or file motions with courts to impose protective measures pursuant to the laws on protection from domestic violence, or they move for the instigation of misdemeanour proceedings.

V Annual reports on results of the activities of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina and individual cases in the Institution of the Ombudsman (Department for the Monitoring of Children's Rights)

Institution of the Human Rights Ombudsman of Bosnia and Herzegovina registers cases of violence against children and peer violence, as well as the cases in which children are the victims of domestic violence. Violence against children is a phenomenon that can be understood and defined in different ways, but the common understanding is that violence means any physically or mentally violent behaviour directed at children, directly or indirectly, by individuals or institutions, which undermines or prevents the normal development, personal integrity or meeting of the needs of the child. Ombudspersons reviewing individual applications or ex officio cases emphasize that every child has the right to grow up in an environment which will ensure respect and support to the child, fully excluding any form of violence. Only such an environment can enable full personal development of the child and create citizens responsible to themselves and others. Having ratified international standards, Bosnia and Herzegovina undertook the obligation to protect children from any form of mental or physical violence. The Entities in Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina have the authority to enact and adopt legislation and bylaws, sign protocols on procedure in case of violence against children, aligned with international standards, in order to protect children from any form of violence. When the family, as a primary unit crucial for the proper personal development and

protection of the child, fails to react timely, the intervention of competent authorities of the state is necessary. These are the institutions and bodies whose mandates include the issue of protection of the rights of the child. Educational institutions, guardianship authorities, family counselling services and law enforcement agencies play a key role in assisting the child victim or potential victim of violence.

With reference to the application of Article 19 of the UN Convention on the Rights of the Child, namely the obligation of every state party to take measures to protect the child from all forms of physical or mental violence, the Ombudspersons try and suggest to the competent authorities in Bosnia and Herzegovina through their regular annual reports that the corporal punishment of children should be clearly and expressly prohibited in all settings and contexts. They deem necessary to emphasize that in addition to the steps that the competent authorities have already taken to define the prohibition of any form of physical or mental violence⁴⁵, in order to implement the recommendations for express prohibition of corporal punishment of children, given to Bosnia and Herzegovina by the UN Committee on the Rights of the Child, it is necessary to reform the legal framework and ensure a support system for the prohibition of the corporal punishment as a social policy, and engage the general public in a debate to raise awareness about this issue.

Family Law of the Republika Srpska prohibits corporal punishment of children in home⁴⁶. In the Federation of Bosnia and Herzegovina and the Brčko District, arrangements are needed to ensure that the applicable legislation clearly prescribes the prohibition of punishing of the child in home. Ombudspersons note the absence of amendments to the relevant laws in the Federation of Bosnia and Herzegovina and the Brčko District, despite the Initiative of the Council for Children of Bosnia and Herzegovina to the governments to amend family laws, laws on social and child protection, laws on protection from domestic violence, criminal codes and laws regulating health care in the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of Bosnia and Herzegovina, and the framework law in the field of preschool and primary education, as well as the law on sport, in order to introduce express prohibition of corporal punishment of children in all settings, in line with the international documents and the Action Plan for Children of Bosnia and Herzegovina 2015-2018. Ombudspersons of Bosnia and Herzegovina conclude that even though the family laws provide for the right to protection from all forms of violence, abuse, maltreatment and neglect of the child, this legal norm is insufficient to ensure protection of the dignity of the child.

Excerpts from the Annual Report on results of the activities of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina for 2017 (individual cases)

Example: Acting on a mother's complaint to the work of the Prosecutor's Office⁴⁷, Ombudspersons have undoubtedly found that the complaint concerned the rights of the child. The competent authorities (the police, the Court, the Prosecutor's Office and the Social Work

⁴⁵ Government of the Federation of Bosnia and Herzegovina, at its 75th session held on 11 March 2013, adopted the Strategy for prevention and combating domestic violence (2013-2017). In May 2014, the Government of the Republika Srpska adopted the Strategy to combat domestic violence of the Republika Srpska (2014-2019).

⁴⁶ Article 97 of the Family Law of Republika Srpska, Official Gazette of Republika Srpska, 54/2002, 41/2008 and 63/2014.

⁴⁷ Ž-SA-05-1294/16.

Center) found that the child was a victim of psychological and physical violence and acted adequately and effectively in the best interest of the child. The child was a victim of domestic violence by the stepfather and owing to the prompt reaction of the relevant Prosecutor's Office, with coordination and assistance of other competent authorities, the child was removed from the family (from the mother and stepfather), and the child's father was immediately called to take care of the child. Ombudspersons closed the case and concluded that the Prosecutor's Office did not undermine or violate the rights of the mother, as a parent.

Example: Ombudspersons received a grandmother's application⁴⁸ that her minor granddaughter, who lives with her mother and stepfather, suffers physical and psychological violence on a daily basis. In addition, she was forced to begging. A social work centre was immediately notified accordingly and it carried out a comprehensive analysis. Unlike the previous case, the conclusion here was that the child was not a victim of violence or economic exploitation. In other words, the allegations were not based on facts.

Example: Ombudspersons received an application by parents stating that their child is a victim of cybercrime⁴⁹. The relevant Prosecutor's Office informed the Ombudspersons that the preparatory proceedings against a minor⁵⁰ for the criminal offense of exploitation of the child or minor for pornography in violation of Article 211 paragraph 1 of the Criminal Code of the Federation of Bosnia and Herzegovina were completed on 22 February 2017. A motion was submitted to the Court moving for the educational measure of intensified supervision by parents.

Excerpts from the Annual Report on results of the activities of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina for 2018 (individual cases)

Example: The Ombudspersons opened a case *ex officio*, due to a video recording of corporal punishment of a child by a teacher in a preschool institution, which was posted on many web portals and social networks in Bosnia and Herzegovina⁵¹. This case also highlights the sensationalist approach of the media to reporting on the violations of the rights of the child. In their press release⁵², Ombudspersons expressed their concern, stating that a clear and express prohibition of the corporal punishment of children in all contexts and settings in Bosnia and Herzegovina has to be introduced. The obligation of Bosnia and Herzegovina to harmonize its legal framework, as well as its obligation to monitor and report on the harmonization and implementation of the legislation in Bosnia and Herzegovina clearly stems from the international standards of protection of human rights of children enshrined in the UN Convention on the Rights of the Child and its Protocols and other conventions of the Council of Europe. Within these standards, the issue of paramount importance is the professional standards for all professionals working for and with children, as well as the system of monitoring of professional treatment of children victims of violence. The investigation is ongoing.

⁴⁸ Ž-SA-01-512/16;

⁴⁹ Ž-BL-01-70/17;

⁵⁰ The perpetrator of the criminal offense was a minor.

⁵¹ Ž-BL-01-861/18;

⁵² on 29 October 2018.

Example: Ombudspersons received a report⁵³ that children in a family from the area of Kostajnica Municipality are completely neglected, educationally and otherwise. Ombudspersons immediately contacted the competent social work centre and asked for their response to these allegations and relevant documentation (evidence) in support of their response. At the same time, they offered their assistance and expertise to the social work centre in order to resolve this case in the best interest of the children (through the competent authorities – the Municipality and the relevant ministry – the Ministry of Health and Social Welfare of the Republika Srpska and other government or non-governmental national and international organizations). The case is being monitored.

Example: Ombudspersons have received an application of a secondary school in the area of the town of Bihać. The school cited the Protocol on the procedure in cases of violence involving children. During their investigation, the Ombudspersons praised the school as it acted in accordance with the law and, what is more, professionally, responsibly, conscientiously, and with the best interest of the child as their primary concern. In their application, the school reports a case of domestic violence to the competent authorities including the Social Work Center Bihać, the Ministry of the Interior of the Una-Sana Canton and the Ombudspersons. The school reports that the school pedagogist had an interview with a third grader and that the child said that they witnessed an altercation of their parents during which the father physically attacked the mother. The school management took all necessary measures within their mandate including the interview with the mother who received counsel. In the course of the investigation the competent bodies (the Ministry of the Interior of the Una-Sana Canton and the Social Work Center Bihać) were invited to provide information to the Ombudspersons on the actions taken after violence was reported. The school informed Ombudspersons that the child was under constant supervision by the school pedagogist and that it was established that the overall situation between the parents had improved. An interview was conducted with the parents, who reported that they are undergoing couples' therapy and trying to find the most suitable solution to the whole situation.

Ombudspersons emphasize that the key child protection services, i.e. the bodies enforcing and implementing laws on protection from domestic violence are the police, prosecutor's offices, courts, social protection institutions, health care institutions, preschools and schools. Their actions should aim to achieve the best interests of the child. The obligation to act is prescribed in many regulations and documents relative to the rights and protection of children, from the international documents adopted by Bosnia and Herzegovina, to national legislation regulating the areas of criminal law, family law, social and child protection, education, and health care. Any form of violence against children is considered an impermissible act and constitutes one of the gravest forms of endangering and violating the rights of the child. It is the duty of the whole society to protect the child from all forms of violence, provide support to the family and an environment enabling child's unimpeded development.

⁵³ Ž-BL-01-889/18;

VI Ombudspersons' Conclusions

It is a generally known fact that corporal punishment of adults is prohibited and punishable in all settings and contexts. In case of children, that only applies mostly to educational institutions, social protection institutions and institutions for the enforcement of criminal sanctions. The right of every person should also be the right of every child. Ombudspersons would like to use this Report to point out that it is unacceptable that our society, which prohibits any form of violence among adults, at the same time fails to condemn, or even approves children being subjected to some form of physical attack and assault, injury or intimidation as a means of punishment and discipline. Parents need support and knowledge, adequate living standard, support and services of institutions and organizations (e.g. parents' employment, prevention of poverty...), counselling services, psychological training, etc. However, the fact that parents do not receive everything they need and as much as they need is no excuse for them not to do everything they can for their child. Good parenting skills and practices are learned and attained, and parental love does not imply absolute freedom that the parent must not limit. Parents should bear in mind that they are criticizing and disciplining child's behaviour, rather than the child and their personality. There is no unique recipe for education, applicable to all children in all contexts, but parents should avoid the behaviours that are detrimental to all children and inefficient in the long term.

Research has shown that cases of physical violence against children are reported. Ombudspersons assume that in practice there are many more cases of corporal punishment of children by parents, as well as other adults.

While they are aware that express/explicit prohibition of physical violence against the child causes a lot of debates and discussions in the general public and professional community, the Ombudspersons would like to warn the competent authorities that they have to prohibit corporal punishment of children in family through relevant legislation as soon as possible. In addition, such prohibition needs to be clearly defined, with an appropriate sanction in case of its violation. These are our obligations arising from the international standards. Corporal punishment of children is still not adequately treated in Bosnia and Herzegovina. Some family laws in Bosnia and Herzegovina should be amended. Corporal punishment of children is prohibited in the Republika Srpska, while in the Federation of Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina there is no clear statutory prohibition of corporal punishment of children in the family.

It is the position of the Ombudspersons that laws alone are not sufficient. However, the enactment of the law would be the first step towards the environment which respects human dignity of the child and the right of the child to equal protection from any endangerment of the physical and mental integrity and protection from cruel and degrading acts and violence, as adults already have. Education and awareness raising on positive and responsible parenting are also needed. Accordingly, the statutory prohibition alone will not resolve the problem, but the Ombudspersons consider it necessary, because in the absence legal reform, all other measures will have limited and short-term effects. The enforcement of the law also requires some preparatory work and certain prerequisites, which primarily include systemic support to the family in non-violent problem solving and choice of alternative forms of child discipline. Prohibition of corporal punishment of children does not mean prohibition from educating and disciplining the child. Rather, it requires new methods and patient and consistent setting of limits. We are confident that the need for and importance of amendments to the family laws in the Federation of Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina will be recognized, in order to remove vague legal provisions and provide legal foundation for

the protection of children from all forms of corporal punishment and other degrading acts. Besides, there are other non-corporal forms of punishment that are also cruel and degrading and thus violate the Convention, such as punishments where children are verbally hurt, demeaned and intimidated, ignored, humiliated, slandered and exposed to the ridicule of others. In addition to the recommendation that Bosnia and Herzegovina as a state party should take all appropriate measures to explicitly prohibit corporal punishment in all settings, including the domestic context, the Committee recommends that Bosnia and Herzegovina should strengthen and expand awareness-raising and education programmes, including campaigns, in order to promote positive and alternative forms of discipline and respect for children's rights with the involvement of children, while raising awareness about the adverse consequences of corporal punishment.

VII Ombudspersons' Recommendations

Recommendation to the Government of the Republika Srpska, Government of the Federation of Bosnia and Herzegovina, Government of the Brčko District of Bosnia and Herzegovina and governments of the Cantons:

In line with their legal authority and powers, and through their competent ministries, in the forthcoming period, propose to the relevant parliaments to adopt statutory provisions which will expressly prohibit corporal punishment of children in all settings, including the domestic setting, at all levels where such prohibition has not yet been introduced;

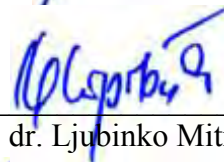
Conduct all necessary activities, through their competent ministries, to raise public awareness through educational programs, including campaigns, with the aim of promoting positive and alternative forms of child discipline and respect for children's rights, with involvement of children and raise awareness about the adverse consequences of corporal punishment of children;

Competent authorities are invited to inform the Ombudspersons within one year on all actions taken in relation to the recommendations of the Ombudspersons and on the effects of the recommendations. Information should be submitted in writing to the Field Office in the Brčko District of Bosnia and Herzegovina, Trg mladih St. (Brčko), stating the reference number Ž-BR-01-154/19.

Ombudspersons of Bosnia and
Herzegovina



Nives Jukić



Prof. dr. Ljubinko Mitrović



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